IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.28630-M of 2005 (O&M)

Date of Decision: February 14, 2007

Mukhtiar Singh and others

...Petitioners

VERSUS

State of Punjab & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.H.S.Mattewal, Senior Advocate with
Mr.R.S.Riar, Advocate,
for the petitioners.

Mr.M.C.Berry, Senior DAG, Punjab,
for the State.

Mr.B.R.Mahajan, Advocate,
for respondents No.3 to 5.

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RANJIT SINGH J.

This order will dispose of Criminal Misc.Nos.28630-M of 2005 (Mukhtiar Singh and others v. The State of Punjab and others) and 20027-M of 2004 (Gulzar Singh etc. v. State of Punjab and others). The facts are being taken from Criminal Misc.No.28630-M of 2005.

The petitioners are seeking quashing of order dated 7.5.2005 passed by Sessions Judge, Kapurthala dismissing the revision petition filed by the petitioners against the order dated 10.2.2005 passed by Sub Divisional Magistrate, Kapurthala.

The facts pleaded in the petition would show that respondents No.3 and 4 had purchased a land measuring 138 kanals 7 marlas in village Randhirpur, Tehsil Sultanpur Lodhi, District Kapurthala. They had given Special Power of Attorney in favour of Ujagar Singh @ Jagar Singh in the year 1976, as they were residents of United Kingdom. Said Ujagar Singh was managing the land on behalf of the respondents (No.3 & 4) as their attorney. It is claimed that respondents No.3 and 4, reposing faith in said Ujagar Singh, had given him a General Power of Attorney including authorisation to sell, mortgage etc. their land on the ground that they were interested in selling the land in view of then prevailing situation in the State of Punjab. On the basis of this General Power of Attorney, on 4.12.2001, Ujagar Singh entered into an agreement to sell. This agreement to sell is in the names of present petitioners, who are the sons of Ujagar Singh @ Jagar Singh. They also filed a suit for specific performance in the court of Addl.Civil Judge (Senior Division), Sultanpur Lodhi, which was pending at the time of filing of the present petition. It is also seen that on coming to know of this act on the part of Ujagar Singh, respondents No.3 and 4 cancelled the power of attorney in his favour and gave another power of attorney in the names of Malkiat Singh and Bachan Singh. A dispute arose between petitioners, who are sons of Ujagar Singh on the one hand with the attorney holders Malkiat Singh and Kewal Singh. A report

dated 4.1.2004 was submitted by the S.H.O. Police Station, Sultanpur Lodhi through D.S.P.Sultanpur Lodhi on the ground that there was apprehension of the breach of peace on account of rival claims of possession over the land. On receipt of this report, S.D.M.Sultanpur Lodhi initiated proceedings under Section 145 Cr.P.C. He issued notice to both the parties on 30.1.2004 for them to submit their claim about their actual possession of the land in dispute. The parties appeared before the S.D.M. on 4.2.2004 and after hearing the parties, the S.D.M. appointed Naib Tehsildar, Sultanpur Lodhi as a Receiver of the property with a direction to take possession of the land and keep the account regarding the income and expenditure thereof till the decision of the claim regarding the possession raised by the parties was settled. This order was impugned by way of revision before the Sessions Judge, Kapurthala, who vide his order dated 7.5.2005, dismissed the revision petition with the observation that the order passed by the S.D.M. was neither illegal nor perverse. It was further found that the same was based on sound judicial principles of law and that discretion exercised by the court was neither arbitrary nor capricious. The court also found that the S.D.M. had not exceeded his jurisdiction while passing the impugned order. Both these orders are under challenge in the present petition filed under Section 482 Cr.P.C.

The counsel for the petitioners has mainly contended that the petitioners are admittedly in possession of land for the last 25-26 years as was noticed by this court at the time of issuing notice of motion. Accordingly, the counsel would contend that the

impugned orders are totally perverse and based on the basis of no material. He would further contend that the statements, Annexures P-6, P-7 and P-8 on record would show that the petitioners are in possession and hence there would be no material before the courts below to pass the impugned orders holding that the possession was that of the private respondents.

Mr.B.R.Mahajan, learned counsel appearing for respondents No.3 to 5, however, would rebut all these contentions raised on behalf of the petitioners. Mr.Mahajan would first point out that the petitioners had filed a civil suit on 2.1.2002 praying for grant of injunction for restraining the respondents from interfering in the peaceful possession of the plaintiff-petitioners over the property in dispute. This application filed by the petitioners under Order 39 Rule 1 & 2 CPC was dismissed by the Addl.Civil Judge, Sultanpur Lodhi on 13.6.2002. It was noticed by the court that the petitioners, who are plaintiffs in the suit, were not proved to be in the established cultivating possession of the land in dispute. It was also noticed that at the most they could be presumed to be in possession of the property in dispute being the trespassers. The petitioners had filed an appeal against the said order, which was also dismissed on 3.3.2003 by Addl.District Judge, Kapurthala. Copies of these orders are annexed with the petition as Annexures R-6 and R-7. It is also pointed out by the learned counsel for the respondents that this suit was ultimately got dismissed as withdrawn by the petitioners. The counsel would also refer to Annexures R-15 and R-16 where the petition filed by the petitioners challenging the proceedings under Sections 145/146 Cr.P.C. was dismissed on 24.5.2004. Mr.Mahajan

has also referred to an affidavit filed by the petitioners, copy of which is annexed as Annexure R-18, wherein the petitioners have admitted the possession of the respondents over the disputed land. The counsel would also refer to paragraphs 10 and 11 of the impugned order passed by the S.D.M. and paragraphs 15, 16 and 17 of the order passed by the Sessions Judge to contend that the impugned orders are passed on the basis of evidence led before the court. The counsel is fully justified in submitting that the issue regarding proceedings under Section 145 Cr.P.C. is to be determined on the basis of evidence that was led before the court for passing the impugned order and not on any collateral material that is not available before the court. In this regard, he pointed out that Annexures P-7 to P-9 were not the material documents on the basis of which the impugned orders were passed. The learned counsel for the petitioners could not point out anything before me to dislodge the conclusion reached by the S.D.M. that Bachan Singh and Balwant Kaur were in actual physical possession of the land in dispute at the time, the Receiver was appointed. The second contention raised by the counsel for the petitioners that the proceedings having earlier been dropped could not have been revived, can also not be accepted. It was found, as a matter of fact, that the present proceedings were initiated afresh and it would not mean revival of the earlier petition. Accordingly, this contention raised by the counsel for the petitioners is not substantiated on basis of material on record. Even otherwise, it has been noticed that present one is the case where the power of attorney was executed in favour of Ujagar Singh for the purpose of installation of a tubewell and on the basis thereof

he fraudulently sold a piece of land to his own sons. The respondents on learning about the same were justified in cancelling and giving new attorney to Malkiat Singh and Kewal Singh to look after their land. It is in this manner that the respondents had come into possession of the land in dispute in January and April, 2001 and since then they are getting the land cultivated through their attorneys Malkiat Singh and Kewal Singh. The suit for specific performance, alleged to have been filed by the petitioners, would also have no effect on the present proceedings as the question of title is not to be gone into in these proceedings. Accordingly, even if the said suit has been decided, it would not effect the possessory right of the respondents over the disputed land. Mr.Mahajan has also pointed out that even in this suit the court has found respondents to be in the possession of the disputed land.

No other argument was raised before me. I do not find any infirmity in the impugned orders and accordingly would dismiss these petitions.

February 14, 2007 (RANJIT SINGH)
ramesh JUDGE